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Paper No. 8

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OFFICE OF PETITIONS

In re Application of
Zha, et al.
Application No. 10/042,128
Filed: January 7, 2002
Attorney Docket No. USFMCR.066C3

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DECISION DISMISSING
PETITION

This is a decision on the petition filed April 8, 2002,
requesting entry of Figure 16 as part of the disclosure.

The application was filed on January 7, 2002. However, on
February 4, 2002, the Office mailed a "Notice to File Missing
Parts" (Notice), stating that the application had been accorded a
filing date of January 7, 2002, and requiring the submission of
the statutory basic filing fee, additional claim fees, and a
surcharge for the late filing fee. Additionally, the Notice
advised applicants that the drawing of Figure 16 described in the
specification appeared to have been omitted.

In response, on April 8, 2002, applicants filed, inter alia, the
present petition, an authorization to charge the \$130.00 petition
fee, and a copy of Figure 16. Applicants admit that they
inadvertently omitted Figure 16 on filing the application papers.
Applicants request entry of Figure 16 because it does not contain
new matter.

It is noted that the application transmittal letter identified
this application as a continuation application of prior
application No. 09/336,059, filed June 18, 1999, and specifically
incorporated by reference the disclosure of the prior
application. Section 201.06(c) of the Manual of Patent Examining
Procedure states that:

. . . an applicant may incorporate by reference the prior
application by including, in the application-as-filed, a
statement that such specifically enumerated prior
application or applications are "hereby incorporated herein
by reference." The statement may appear in the
specification or in the application transmittal letter. The
inclusion of this incorporation by reference of the prior
application(s) will permit an applicant to amend the
continuing application to include any subject matter in such
prior application(s), without the need for a petition.
(emphasis supplied)

Obviously, in view of the incorporation by reference of the prior application, the drawing of Figure 16 is not new matter if it was a part of the disclosure of the prior application.

However, as applicants admit, Figure 16 was not present on the filing of the above-identified application. Accordingly, the Notice mailed on February 4, 2002, was correct in stating that Figure 16 described in the specification had been omitted. Therefore, the requirement for the omitted figure was proper and will not be withdrawn.

Accordingly, the petition is dismissed.

The \$130.00 petition fee was charged to Deposit Account No. 11-1410, as authorized in the petition.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of January 7, 2002, using the application papers filed on that date.

Thereafter, the application will be forwarded to Technology Center 1700 for consideration by the examiner of the petition filed April 8, 2002, as an amendment requesting the entry of a new sheet of drawing.

Any inquiries related to this decision should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
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